

ICL5lenC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 NATAN M. LENJO,

4 Plaintiff,

New York, N.Y.

5 v.

17 Civ. 7431 (WHP)

6 NEW YORK DISTRICT ATTORNEY'S  
7 OFFICE, *et al.*,

8 Defendants.

-----x

9  
10 December 21, 2018  
11:00 a.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,

13 District Judge

14  
15 APPEARANCES

16  
17 NATAN M. LENJO, Pro se

18 ZACHARY W. CARTER

19 Corporation Counsel for the City of New York

20 BY: MATTHEW W. McQUEEN

21 Assistant Corporation Counsel

ICL5lenC

conference

1 (In robing room)

2 THE COURT: Good morning. This is a pre-motion  
3 conference. Would the plaintiff state his name for the record?

4 MR. LENJO: My name is Natan Lenjo and I am the  
5 plaintiff.

6 THE COURT: Good morning, Mr. Lenjo.

7 Counsel for the defendant?

8 MR. McQUEEN: Good morning, your Honor. Matthew  
9 McQueen with the New York City Law Department, for defendants.

10 THE COURT: Good morning to you, Mr. McQueen.

11 So, Mr. Lenjo, have you seen the City's request to  
12 make a motion for summary judgment?

13 MR. LENJO: Yes, your Honor. I did see the letter  
14 that the City made to make a motion for summary judgment.

15 THE COURT: Now, is your unlawful search claim based  
16 solely on the defendant's failure to show you the search  
17 warrant?

18 MR. LENJO: It's based on individual persons. I  
19 wasn't shown by defendants a search warrant but it was based on  
20 my actual search itself.

21 THE COURT: The officers had a purportedly legitimate  
22 basis, they had a warrant to conduct the search. I guess my  
23 view is that their failure to show you the warrant is really  
24 not going to sustain a claim by you for an unlawful search  
25 because they had the authority to search.

ICL5lenC

conference

1 MR. LENJO: Yes. When they had, the defendant stated  
2 that they had a search warrant the occupants in the apartment,  
3 including myself, did open the door to the premises for the  
4 defendants. What the search was that, for me, when I was  
5 been -- when I went out there and had arrested me and searched  
6 me, I was the only occupant within the premises that was  
7 actually physically searched.

8 THE COURT: So, the defendants want to make a motion  
9 now which, if it is granted, would result in the dismissal of  
10 your action without a trial.

11 Do you understand that?

12 MR. LENJO: I would want a trial, your Honor.

13 THE COURT: I understand that, but a motion for  
14 summary judgment would permit them to try to dispose of this  
15 case without having a trial and if I were to grant their motion  
16 for summary judgment, then there would be no trial in this  
17 case.

18 MR. LENJO: I would be opposed to that, your Honor.

19 THE COURT: I understand.

20 MR. LENJO: I understand, your Honor.

21 THE COURT: The point I am trying to make to you is  
22 that in teeing up, in fixing a schedule for a motion, it is  
23 going to be very important for you to submit to me evidence,  
24 affidavits and documents that substantiate your claims that  
25 contest the facts that the defendants are going to offer that

ICL5lenC

conference

1 they're going to claim are undisputed in the motion and their  
2 argument is going to be that if these certain facts are  
3 undisputed, therefore the Court must accept them, and if the  
4 Court accepts them the claim should be dismissed in this case.  
5 And so, what I am saying to you is you, in opposing this  
6 motion, you cannot simply rely upon the allegations in your  
7 complaint. You have to come forward with evidence and show  
8 that there is a material issue of fact that some of the  
9 important facts are in dispute.

10 Do you understand that?

11 MR. LENJO: That I do understand.

12 THE COURT: All right.

13 Now, Mr. McQueen, would you like to just briefly  
14 summarize here, for both the plaintiff and me, the nature of  
15 your summary judgment motion?

16 MR. McQUEEN: Yes.

17 The defendants had the lawfully-issued search warrant  
18 that they used to enter the apartment. When they approached  
19 the apartment and knocked on the door, they waited for quite  
20 some time. And believing that the plaintiff was not home, left  
21 briefly, but then returned after speaking with somebody who  
22 said they believed he was home. They went back, eventually  
23 somebody responded. They were still outside for quite some  
24 time telling them that they were the police; no one was opening  
25 the door. Eventually they opened the door. At that point

ICL5lenC

conference

1 plaintiff came out of the apartment holding an object above his  
2 head which the officers didn't know what it was and that  
3 certainly could be dangerous toward them. They attempted to  
4 grab the object. Plaintiff was saying this is the evidence and  
5 tried to hand it off to a family member who was outside in the  
6 hallway; ultimately they did not take what was the evidence  
7 from him. The officers were able to get plaintiff in handcuffs  
8 after some difficulty and seized the object which turned out to  
9 be an iPad.

10 The search warrant was, due to the nature of what they  
11 were looking for, illicit images and videos that would be  
12 contained on electronic devices, the warrant was to seize any  
13 electronic devices and that was certainly one of the things  
14 subject to the warrant.

15 So, plaintiff was put in handcuffs at that time. The  
16 premises were searched, there were a number of items that were  
17 seized, and plaintiff was placed under arrest at that time in  
18 connection with waiving the object over his head, being  
19 dangerous, and also resisting arrest. Ultimately, it turned  
20 out that there were some images on the electronic devices that  
21 were seized but images of multiple people that lived in the  
22 apartment, the DA decided that it wasn't a significant enough  
23 connection with the plaintiff to prosecute for that. The DA's  
24 office decided to prosecute for obstruction of governmental  
25 administration, for refusing to open the door for quite some

ICL5lenC

conference

1 time, and for also trying to hand off the iPad to a relative  
2 and also for resisting arrest. The officers did not take part  
3 in the decision to, upon what to charge him with. That was all  
4 up to the district attorney's office.

5 THE COURT: When do you want to file your motion?

6 MR. McQUEEN: I will be away sometime next week for  
7 the holiday, if I could have February 1 would probably a time  
8 that I could do.

9 THE COURT: All right. File your motion on February  
10 1.

11 How much time would you like, Mr. Lenjo, to oppose  
12 this motion? Now you are going to have to, as I say, muster  
13 evidence, bring forward evidence in the form of affidavits or  
14 documents to contest.

15 MR. LENJO: Yes, I do intend to do that, your Honor,  
16 in the form of depositions of the defendants and also the  
17 testimony given by the defendants during the criminal  
18 prosecution and probably video evidence as well that was  
19 submitted during the trial.

20 THE COURT: All right. So, when would you like to  
21 file opposing papers?

22 MR. LENJO: 60 days after the counsel for the  
23 defendants files the motion.

24 THE COURT: That's pretty long, but how about filing  
25 it by April 12. All right?

ICL5lenC

conference

1 MR. LENJO: Okay. That is sufficient.

2 MR. McQUEEN: That's more than 60 days.

3 THE COURT: Yes, that's more than 60 days. How about  
4 filing it by March 29. Okay? That's almost --

5 MR. LENJO: Two months.

6 THE COURT: That's almost two months, March 29. And  
7 then get any reply to me by April 8.

8 MR. McQUEEN: Could I have two weeks after the 29th,  
9 until the 12th?

10 THE COURT: April 12. I will take the motion on  
11 submission. If you feel that argument is necessary I will let  
12 you know. And just to reiterate, because the defendants are  
13 now moving for summary judgment, Mr. Lenjo, you need to come  
14 forward with evidence to support your claims and you cannot  
15 rely on the allegations in your complaint and I want to remind  
16 you that there are valuable resources available to you,  
17 specifically at the pro se intake unit and, which is at 40  
18 Centre Street now, it has been relocated from this building, to  
19 room 444. And, additionally, there is the New York Legal  
20 Assistance Group clinic for pro se litigants check note that  
21 provides free advice and is across the street in the Thurgood  
22 Marshall Court House on the lower level at room 22.

23 All right? Have you seen them before?

24 MR. LENJO: Yes, sir.

25 THE COURT: Good.

ICL5lenC

conference

1 MR. LENJO: I do use them.

2 THE COURT: All right. I will enter a scheduling  
3 order.

4 Anything further?

5 MR. LENJO: In terms of the letter that I had sent to  
6 your Honor pertaining to these claims, do you have a decision  
7 based on that?

8 MR. McQUEEN: There was a little bit of clarity as to  
9 what claims were pled in the complaint. Plaintiff noted that  
10 he did plead the malicious prosecution in the complaint.

11 THE COURT: I think that I'm construing Mr. Lenjo's  
12 complaint to bring claims for malicious prosecution, false  
13 arrest, false imprisonment, failure to intervene, and unlawful  
14 search and seizure but I do think that you should think about  
15 whether or not you want to pursue the unlawful search claim  
16 given the fact that the defendants had a valid search warrant.

17 MR. LENJO: Well, then I would like it to be  
18 differentiated between the unlawful search and seizure of the  
19 targeted premises and the unlawful search and seizure of the  
20 persons in my case also as a person pertaining to being a false  
21 arrest and malicious prosecution.

22 THE COURT: Yes, but the false arrest and false  
23 prosecution are already, they're claims. That's how I am  
24 construing your pleading.

25 MR. LENJO: Correct. Yes.



ICL5lenC

conference

1           Now as search warrant for, as the defendant searched  
2 my person and did confiscate items that were not associated  
3 with the search warrant and therefore that aspect of unlawful  
4 search and seizure of persons, I would like that to be  
5 separated from that of the premises.

6           THE COURT: All right. I will construe the complaint  
7 as stating that claim so you will address that on your summary  
8 judgment motion, Mr. McQueen.

9           MR. McQUEEN: Yes, your Honor.

10          THE COURT: All right?

11          MR. LENJO: But specifically different, right?

12          THE COURT: Yes.

13          MR. LENJO: And property and targeted premises, two  
14 separate searches.

15          THE COURT: All right.

16          MR. McQUEEN: Will the order from today's conference  
17 contain a listing of the --

18          THE COURT: I think this is sufficient here. I will  
19 just have the scheduling order.

20          MR. McQUEEN: Okay.

21          THE COURT: All right?

22          MR. McQUEEN: Okay. And with regard, I don't believe  
23 you do the bundling rule so we file as we -- you want to file  
24 it on the docket, correct?

25          THE COURT: Correct. All right? Thank you very much.

ICL5lenC

conference

1 Have a good holiday. Enjoy the rest of the year, what is left  
2 of it. Okay?

3 MR. LENJO: Likewise.

4 MR. McQUEEN: Thank you, your Honor.

5 THE COURT: Thank you.

6 o0o